

LIBRARY
SUPREME COURT, U.S.

Vol. III
TRANSCRIPT OF RECORD
(Pages 1217 to 1802)

Supreme Court of the United States

OCTOBER TERM, 1951

Nô. 178

UEBERSEE FINANZ-KORPORATION, A. G.,
PETITIONER,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL AND
AS SUCCESSOR TO THE ALIEN PROPERTY CUS-
TODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JULY 7, 1951.

CERTIORARI GRANTED OCTOBER 15, 1951.

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,464

UEBERSEE FINANZ-KORPORATION, A. G.,

Appellant,

—against—

J. HOWARD McGRATH, Attorney General and as
—successor to the Alien Property Custodian,

Appellee.

Appeal from the District Court of the United States for the
District of Columbia.

Vol. III—Pages 1217 to 1802

INDEX

PAGE

Docket Entries	1a
Complaint	1
Amendment to Complaint	5
Answer to Complaint as Amended	7
Pretrial Proceedings and Defendant's Memorandum	10
Plaintiff's Interrogatories	15
Defendant's Answer to Plaintiff's Interrogatories	18
Defendant's Supplemental Answer to Interrogatories	22
Defendant's Interrogatories	24
Plaintiff's Answer to Interrogatories	29
Plaintiff's Motion for a New Trial	36
Affidavit of Eleonore Fernhammer	38
Opinion of District Court	41
Findings of Fact and Conclusions of Law	52
Judgment	64
Defendant's Memorandum Opposing Motion for New Trial	65

Plaintiff's Memorandum in Support of Motion for New Trial	85
Affidavit of Walter E. Gallagher	90
Affidavit of Richard J. Connor	91
Affidavit of Heinrich Kronstein	98
Defendant's Additional Memorandum in Opposition to Motion for a New Trial	105
Memorandum of District Court Denying New Trial	109
Order Denying New Trial	110
Notice of Appeal	111
Order of Substitution of Defendant	112

TESTIMONY

PLAINTIFF'S WITNESSES

Wilhelm von Opel (Deposition):

Direct	114
Cross	135

Wilhelmine Dern (Deposition):

Direct	167, 178
Cross	175

Edith Esklony (Deposition):

Direct	185
Cross	204

PLAINTIFF'S WITNESSES (Continued)

	PAGE
Marta von Opel (Deposition):	
Direct	205
Cross	208
Heinrich Kronstein:	
Direct	278, 382, 1100, 1597
Cross	340, 358, 1602
Fritz von Opel:	
Direct	387, 961, 1117, 1121, 1556
Cross	462, 588, 882, 986, 1120, 1585
Hans Frankenberg:	
Direct	798, 854, 864
Cross	805, 859, 864
Daniel Gros:	
Direct	994, 1045
Cross	1016
Otto Kauffmann:	
Direct	1062, 1095
Cross	1085
Andrew G. Clausen, Jr.:	
Direct	1409
Cross	1412

PLAINTIFF'S WITNESSES (Continued)

	PAGE
Walter van Dyke Bayer:	
Direct	1417, 1446
Cross	1432
Eugen Meier:	
Direct	1448, 1507
Cross	1463, 1511

DEFENDANT'S WITNESSES

Rudolf Deku:	
Direct	562, 587
Cross	572
Harry Kiefer:	
Direct	866, 877
Cross	869
Calvin Houghland:	
Direct	1103, 1114
Cross	1107
John Mason Houghland:	
Direct	1121, 1214
Cross	1151, 1218
Butler Parnell Crittenden:	
Direct	1221
Cross	1249

DEFENDANT'S WITNESSES (Continued)

PAGE

Magdalena Schoch:

Direct	1264, 1403
Cross	1329, 1406

James D. Mooney (Deposition):

Direct	1534
Cross	1547

Margot von Opel (Deposition):

Direct	1605
Cross	1617

ADDITIONAL WITNESSES

Manfred Stansfield:

Deposition	209
Testimony	746

Carl Friedrich Wilhelm:

Deposition	1050
------------------	------

PLAINTIFF'S EXHIBITS

NO.		PAGE
3	Letter from Wilhelm von Opel dated April 11, 1929	1803
4	Power of attorney dated October 6, 1931.....	1804
5	Gift agreement dated October 5, 1931.....	1805
6	Letter from Fritz von Opel dated October 17, 1931	1807
7	Letter from Dr. Max Hackenburg dated October 3, 1931	1809
8	Draft of gift agreement dated October 3, 1931	1813
9	Memo of "Fundamental considerations" of Dr. Gros	1816
10	Letter from Dr. Max Hackenburg dated October 5, 1931	1817
24	History of gift	1820
25	1931 tax return of Wilhelm von Opel.....	1821
26	Tax assessment against Wilhelm von Opel dated August 2, 1932	1822
29	Tax return of Wilhelm von Opel dated October 27, 1933	1823
30	Tax return of Wilhelm von Opel for 1935.....	1824
30E	Explanation of tax return of 1935.....	1825

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
35	Report of Wilhelm von Opel proxy dated Sept. 28, 1940	1825
35A	Letter to Finance President, Berlin, dated Sept. 28, 1940	1828
36	Letter to Reichsbank dated April 16, 1937.....	1829
37	Report of Wilhelm von Opel on U. S. claim dated April 16, 1937.....	1830
38	German gift tax assessment against Wilhelm von Opel dated January 7, 1932.....	1831
39	Inheritance tax report of Wilhelm von Opel, dated January 15, 1932	1832
40	Tax assessment of German Government dated Feb. 13, 1933.....	1835
41	Notice of appeal against tax assessment dated February 21, 1933	1838
45	Letter to German revenue office dated January 2, 1932	1839
46	Transcript of bank account	1840
47	Letter to Fritz von Opel dated Sept. 22, 1933	1846
49	Stipulation dated November 24, 1948.....	1847
50	Cable from Fritz von Opel dated Sept. 17, 1931	1852
51	Cable from John Thomas Smith dated Sept. 21, 1931	1853

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
52	Cable from Wilhelm von Opel dated Oct. 5, 1931	1853
53	Cable from John Thomas Smith dated Oct. 5, 1931	1854
54	Cable from Fritz von Opel dated Oct. 13, 1931	1854
56	Letter from Fritz von Opel dated Oct. 19, 1931	1855
57	Letter from John Thomas Smith dated Oct. 19, 1931	1856
58	Letter from Fritz von Opel, as attorney in fact, dated Oct. 20, 1931	1857
59	Letter from Geo. J. Kenny dated Oct. 20, 1931	1857
60	Letter from Fritz von Opel, as attorney in fact, dated Oct. 20, 1931	1858
61	Letter from Fritz von Opel, as attorney in fact, dated Oct. 20, 1931	1859
62	Letter from J. P. Morgan & Co. dated Oct. 20, 1931	1860
64	Letter from John Thomas Smith dated Oct. 22, 1931	1860
65	Letter from Fritz von Opel dated Oct. 23, 1931	1861
66	Letter from Fritz von Opel, as attorney in fact, dated Oct. 28, 1931	1862

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
68	Transcript of bank account of Wilhelm von Opel	1863
69	Bank instructions dated Oct. 30, 1931.....	1864
70	Transcript of bank account	1865
71	Bank memorandum dated Nov. 17, 1931.....	1870
72	Letter from Fritz von Opel dated May 31, 1932	1871
73	Letter from Overseas Finance Corp. dated May 9, 1932	1871
74	Power of attorney to Fritz von Opel dated May 9, 1932.....	1872
75	Letter from Fritz von Opel, as attorney, dated May 31, 1932.....	1873
76	Stipulation, declaration of incorporation and articles of incorporation.....	1874
78	Letter from Union Bank of Switzerland dated June 25, 1936	1880
79	Statement of Adler & Company, Inc.	1882
80	Deposit statement of Adler & Company, Inc. dated Oct. 19, 1948	1883
83	Notification of departure.....	1884
90	Letter from Transdannbia Bauxite dated March 22, 1941	1885

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
91	Telegram to Transdanubia.....	1889
92	Telegram from Transdanubia Bauxite.....	1890
93	Memo of Fritz von Opel.....	1891
96	Letter from D. Gros dated July 27, 1935.....	1891
97	Letter from D. Gros dated Oct. 8, 1935.....	1899
98	Copy of letter from D. Gros dated Nov. 22, 1935.....	1901
99	Letter from D. Gros dated Feb. 8, 1936.....	1907
100	Letter from D. Gros dated March 11, 1936.....	1912
101	Letter from D. Gros dated July 7, 1937.....	1915
102	Copy of Swiss Supreme Court decision.....	1917
103	Liechtenstein citizenship certificate of Fritz von Opel dated Dec. 22, 1939.....	1924
104	Statement from Liechtenstein.....	1925
162	Current account of Transdanubia.....	1925
163	Letter from Mason Houghland dated Oct. 25, 1943.....	1927
168	Letter to Alien Property Custodian dated Nov. 5, 1944.....	1928
169	Letter to Alien Property Custodian dated Nov. 6, 1944.....	1933

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
170	Telegram from Alien Property Custodian dated Dec. 29, 1944.....	1945
171	Telegram from Alien Property Custodian dated Dec. 20, 1944.....	1946
177	Liechtenstein statutes	1949
178	Letter to Fritz von Opel dated Aug. 22, 1933	1958

DEFENDANT'S EXHIBITS

1	Letter to German Revenue Office dated Sept. 9, 1931	1961
2	Memo attached to report of Wilhelm von Opel dated Sept. 9, 1931.....	1962
3	Letter from Wilhelm von Opel dated Oct. 28, 1931.....	1963
4	Letter from Frey dated Dec. 24, 1931.....	1965
5	Letter from Adler & Co. dated Nov. 30, 1931.....	1966
6	Letter from Wilhelm von Opel dated Oct. 23, 1931	1967
7	Cable from John Thomas Smith dated Oct. 30, 1931	1968
8	Transcript of record of Gold case.....	1968
9	Letter from National City Bank dated Sept. 22, 1933	2104

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
10	Letter from German Foreign Exchange Control Office dated March 21, 1932.....	2105
11	Letter from German Office for Registration of Foreign Debts dated Nov. 30, 1931.....	2106
12	Letter from Wilhelm von Opel dated Dec. 11, 1931	2107
13	Letter from Wilhelm von Opel dated Jan. 5, 1932	2110
14	Letter from Wilhelm von Opel dated Jan. 13, 1932	2111
15	Letter to Wilhelm von Opel dated Jan. 25, 1932	2113
16	Letter from Reichbank Director Goller dated Feb. 5, 1932	2114
17	Swiss notice of attachment dated Feb. 10, 1932	2115
18	Letter to Wilhelm von Opel dated Feb. 25, 1932	2116
19	Swiss notice of attachment to dispose of attached property dated March 15, 1932.....	2117
20	Letter to Wilhelm von Opel dated March 24, 1932	2118
21	Letter from Wilhelm von Opel dated April 5, 1932	2119

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
22	Letter from Wilhelm von Opel dated April 14, 1932	2122
23	Letter from Office for Registration of Foreign Debts dated May 9, 1932	2125
24	"Considerations of * * * the gift" dated Sept. 19, 1932	2127
25	Letter from Fritz von Opel dated Dec. 21, 1936	2127
26	Letter from Wilhelm von Opel dated Sept. 21, 1933	2128
27	Telegram from Wilhelm von Opel dated May 17, 1934	2132
28	Acknowledgment of debt by Wronker-Flatow dated March 16, 1931	2132
29	Letter from M. Wronker-Flatow dated March 8, 1937	2133
30	Letter from John Thomas Smith dated June 2, 1932	2135
31	German Reich President Executive Order dated Aug. 1, 1931	2137
32	Will of Wilhelm von Opel	2143
33	Letter from City Bank Farmers Trust Co. dated Oct. 20, 1931	2151
34	Letter to Fritz von Opel dated Jan. 5, 1935	2152

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
35	Letter to Fritz von Opel dated Dec. 27, 1934....	2153
36	Copy of letter from Fritz von Opel dated Nov. 10, 1945	2154
37	Letter from Adler & Co. Bankers dated April 15, 1931	2157
38	Letter from Fritz von Opel dated April 27, 1931	2158
39	Letter from German Foreign Exchange Dept. dated Sept. 17, 1931	2159
40	Letter from Reichsbank Branch dated Oct. 22, 1931	2160
41	Telegram from Fritz von Opel dated Dec. 19, 1931	2162
43	Memorandum of Fritz and Margot von Opel	2162
45	Letter to Davis, Polk, etc. dated May 21, 1935	2211
46	Letter to Davis, Polk, etc. dated May 29, 1935	2213
47	Opel telegram dated May 29, 1935	2214
48	Letter to Dr. Gros dated Aug. 2, 1935	2214
49	Account book	2220
50	Letter from Overseas Finance Corp., Ltd. dated Nov. 27, 1935	2222

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
51	Cable from Wilhelm von Opel dated Oct. 7, 1931	2223
52	Letter from Fritz von Opel dated Oct. 20, 1931	2223
53	Cable from German Bank dated Oct. 21, 1931	2224
54	Transcript of bank account	2225
58	Smith cable dated Nov. 10, 1931	2229
59	Telegram to Mason Houghland dated Aug. 14, 1937	2229
60	Cable to Houghland dated Aug. 4, 1937	2229
61	Letter from Fritz von Opel dated Aug. 23, 1937	2230
62	Opel cable dated Aug. 28, 1937	2232
63	Houghland telegram dated July 20, 1939	2232
64	Cable from Fritz von Opel dated July 22, 1939	2232
65	Houghland telegram dated July 22, 1939	2232
66	Memorandum of Washington conference on April 29, 1935	2233
67	Frankenberg telegram dated June 14, 1936	2236
68	Affidavit of Fritz von Opel sworn to July 30, 1941	2237

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
69	Affidavit of Isidor J. Kresel sworn to Oct. 16, 1941	2242
70	Inventory of Dec. 31, 1938	2248
71	Letter to Overseas Finance Corp. Ltd. dated March 23, 1942	2258
72	Letter from Adler & Co. Bankers dated June 6, 1942	2259
73	Letter to Overseas Finance Corp. Ltd. dated Sept. 22, 1942	2259
74	Letter to Overseas Finance Corp. Ltd. dated Nov. 17, 1942	2260
75	Telegram from Dr. Rhine dated June 9, 1939	2261
76	Opel telegram dated June 9, 1939	2262
77	Letter to Fritz von Opel dated July 13, 1939	2263
78	Letter from Fritz von Opel dated July 31, 1939	2265
79	Letter to Fritz von Opel dated Sept. 8, 1939	2268
80	Letter from Fritz von Opel dated Sept. 11, 1939	2269
81	Letter to Fritz von Opel dated Sept. 16, 1939	2270
82	Opel telegram dated Sept. 16, 1939	2271
83	Letter from Bayer & Clauson dated Aug. 13, 1936	2272

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
84	Cable from Frankenberg dated June 18, 1936	2276
85	Cable to Frankenberg received June 17, 1936	2276
86	Memorandum for Dr. Frankenberg re Overseas	2277
87	Letter to Dr. Henggeler dated June 19, 1936	2278
88	Letter to Leslie, Strachan Co. dated Nov. 14, 1939	2280
89	Letter to Overseas Finance Corp. Ltd. dated Oct. 23, 1939	2281
90	Letter from Transdanubia dated Feb. 4, 1932	2282
91	Letter to Fritz von Opel dated Sept. 19, 1939	2283
92	Letter to Fritz von Opel dated Oct. 4, 1939	2285
93	Letter from Fritz von Opel dated Oct. 28, 1939	2286
94	Letter to Fritz von Opel dated Nov. 4, 1939	2287
95	Letter from Fritz von Opel dated Nov. 10, 1939	2288
96	Letter from Fritz von Opel dated April 13, 1940	2294
97	Letter to Giulini Bros. dated March 14, 1940	2296
98	Aide memoire of Oct. 24, 1940	2299
105	Cable to Houghland	2301